



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 7, 1992

Mr. Richard Rafes, J.D., Ph. D.  
Vice President and General Counsel  
University of North Texas  
Texas College of Osteopathic Medicine  
P. O. Box 13426  
Denton, Texas 76203-3426

OR92-378

Dear Mr. Rafes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14893.

The public requestor seeks from the University of North Texas records relating to the university police department's investigation of the requestor's complaint regarding the conduct of certain department personnel. We note first that, as the requestor's complaint which gave rise to the investigation related to an incident involving himself, and as much of the requested information consequently relates to him, we are treating his request under section 3B of the Open Records Act. Since, under section 3B, a person's own privacy interests may not be asserted against him to withhold requested information from him, we need not consider here whether such privacy interests could be asserted to withhold any of the information from the public generally. *See, e.g.,* Open Records Decision No. 577 (1990), (copy enclosed). Therefore, this ruling should not be taken to apply to requests from the general public for this information.

We turn now to material which must be withheld from the requestor under the federal Family Education Rights and Privacy Act [FERPA], 20 U.S.C. 1232g. *See also* Open Records Act § 14(e) (Open Records Act to be construed in conformity with FERPA). You note that Exhibit E consists of a statement by a university student. The information in Exhibit E either directly identifies or tends to identify the student. Exhibit E must be withheld in its entirety under FERPA as protected "educational record" material. Similarly, the student's name in Exhibit F,

and name the and other identifying information in the third paragraph of Exhibit D, must be withheld under FERPA. We are unable to determine from the face of the documents submitted or your explanations of them whether any of the remaining information you have submitted as responsive to the request contains material identifying or tending to identify students. Please reexamine the documents to insure that any remaining information identifying or tending to identify students other than the requestor himself is withheld from disclosure in accordance with FERPA.

You assert that some of the submitted information may be withheld from disclosure under sections 3(a)(1), 3(a)(2), and 3(a)(8) of the Open Records Act. Your section 3(a)(1) claim appears limited to the "informer's privilege" branch of that exception. However, that privilege may be invoked only to protect identities of persons reporting *violations of law*. Open Records Decision No. 515 (1988), copy enclosed. We do not understand any of the statements for which you invoke the protection of the informer's privilege to be concerned with violations of law. Consequently, the informer's privilege is not applicable to those statements or the identities of those giving them.

Your section 3(a)(2) claim must be considered under the same standards as privacy claims under section 3(a)(1). See *Hubert V. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App. -- Austin 1983, writ ref'd n.r.e.). We do not find that any of the submitted information falls within either constitutional or common-law privacy protection as enunciated under section 3(a)(1). See *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976).

The section 3(a)(8) exception applies to:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

The information for which you claim 3(a)(8) protection appears, at best, to relate only tangentially to criminal activity. We do not believe that you have made a sufficient showing that any of information for which you claim section 3(a)(8) protection falls within the scope of that exception. See Open Records Decision No. 582 (1990), (copy enclosed).

You also claim that some of the information at issue may be withheld under section 3(a)(11) of the Open Records Act which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The test for the applicability of section 3(a)(11) to given information is whether the information consists of advice, opinion, or recommendation used in the deliberative process. See Open Records Decision No. 574 (1990), (copy enclosed). We agree that some of the information in Exhibits D and I may be withheld under section 3(a)(11). We have marked the portions that may be thus withheld.

Finally, you claim that all of the submitted information may be withheld under section 3(a)(3) of the Open records Act which protects:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

To be exceptable under section 3(a)(3), information must relate to pending or reasonably anticipated litigation. *Heard v. Houston Post Co.* 684 S.W.2d 210, (Tex. App. -- Houston 1984, writ ref'd n.r.e.). You allude to pending litigation in which the university is involved. Having reviewed your arguments for withholding the submitted information under section 3(a)(3), we conclude that a portion of the information contained in Exhibit H may be withheld under section 3(a)(3). We have marked the information which may be so withheld. We do not find that any of the remaining information, not already determined to be exceptable under other provisions, may be withheld under section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-378.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

WW/lmm

Ref.: ID# 14893

Enclosure: Open Records Decision Nos. 515, 574, 577, 582

cc: Mr. Bob Martin  
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